



## **Q & A ON MEDICAID LEGISLATION**

### **APRIL 23, 2008**

In advance of the floor vote on legislation (H.R. 5613) regarding several Medicaid regulations, the RSC has prepared the following document providing context and background information on the proposal.

#### **What would H.R. 5613 do?**

H.R. 5613 would extend certain existing moratoria on the Centers for Medicare and Medicaid Services (CMS), prohibiting the agency from promulgating rules related to the integrity of the Medicaid program until April 1, 2009. In addition, H.R. 5613 would impose additional new moratoria on CMS relating to other proposed Medicaid regulations, also until April 2009.

#### **Why have these regulations been issued?**

Since 1994, the Government Accountability Office (GAO) has compiled more than a dozen reports highlighting problems with Medicaid financing, and specifically the ways in which state governments attempt to “game” Medicaid reimbursement policies in order to maximize the amount of federal revenue funding state health care programs. The persistent shortcomings in federal oversight of these state funding schemes prompted GAO to add the Medicaid program to its list of federal entities at high risk of mismanagement, waste, and abuse in 2003.

Many of the GAO reports—as well as audits performed by the Department of Health and Human Services’ Inspector General—have included calls for additional federal oversight around various state Medicaid reimbursement initiatives, particularly the need for clear and consistently applied guidance from CMS about the permissiveness of various financing arrangements. Several of CMS’ proposed regulations attempt to remedy this problem, and restore clarity and fiscal integrity to the Medicaid program.

#### **Why is CMS publishing clearer regulatory standards on a permanent basis?**

Press reports, as well as the GAO studies and Inspector General audits, have provided several specific examples of waste, fraud, and abuse in the Medicaid program:

- Over \$300 million—far more than any other state Medicaid program—in spending by the New York state Medicaid program on transportation services, some of which involved

rides for seniors mobile enough to rely on public transportation and other services which investigators believe may not have been performed at all;<sup>1</sup>

- A May 2003 claim for Medicaid targeted case management reimbursement that included the following notation from the case manager explaining her contact with the beneficiary:  
Phone call with mother. Discussed the outstanding warrant for [name redacted]. She does not know where he is. She will call police when he shows up;
- Rehabilitation services that include such activities as trips to Wal-Mart and bingo games;
- A New York nursing home that was forced to return more than half its gross revenues to state and county offices, resulting in net revenues that were \$20 million less than its operating costs—and creating significant staffing shortages that may have affected patients' quality of care.<sup>2</sup>

### **Does this bill rely on a PAYGO gimmick?**

According to the Congressional Budget Office, the bill withdraws more than \$750 million from the Physician Assistance and Quality Improvement (PAQI) fund in 2013. While H.R. 5613 replenishes the PAQI fund in later fiscal years, some conservatives may be concerned that a mechanism designed to reward physician quality is being used as a “slush fund” to overcome what would otherwise be a scoring problem under the five-year budgetary model and House PAYGO rules.

### **How much does this bill cost?**

According to the Congressional Budget Office, a moratorium prohibiting further regulatory action by CMS until April 2009 costs \$1.65 billion over both five and ten years. However, this score presumes the full implementation of the regulations in April 2009 under a new Administration. If the moratoria are maintained, the lost savings would total \$17.8 billion over five years, and \$42.2 billion over ten.

### **Could a future Administration decide to withdraw the pending regulations before they go into full effect?**

Yes. In fact, staff for Energy and Commerce Committee Chairman Dingell have publicly stated that H.R. 5613 is intended to delay the implementation of the Medicaid rules just long enough so that a future Administration can withdraw them.

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<sup>1</sup> Clifford Levy and Michael Luo, “Medicaid Fraud May Reach into Billions,” *The New York Times* 18 July 2005, available online at [http://www.nytimes.com/2005/07/18/nyregion/18medicaid.html?\\_r=1&pagewanted=print&oref=slogin](http://www.nytimes.com/2005/07/18/nyregion/18medicaid.html?_r=1&pagewanted=print&oref=slogin) (accessed March 29, 2008).

<sup>2</sup> “Adequacy of Medicaid Payments to Albany County Nursing Home,” (Washington, DC, Department of Health and Human Services Office of the Inspector General Report #A-02-02-01020), available online at <http://oig.hhs.gov/oas/reports/region2/20201020.pdf> (accessed April 20, 2008), pp. 6-7.

**If a future Administration chose to withdraw some or all of the regulations, how much savings would the Executive branch have to find to replace the foregone \$40 billion in savings?**

Not a dime. PAYGO rules apply only to House consideration of legislation, and do not extend to Executive branch actions.

**Does the Administration support H.R. 5613?**

No. In a [Statement of Administration Policy](#) released yesterday, the White House placed a veto threat on H.R. 5613 because it would “put billions of dollars of Federal funds at risk, and would turn back progress that has already been made to stop abusive State practices” in Medicaid.

**Should H.R. 5613 be considered under suspension of the rules?**

During debate on H.R. 5613, Energy and Commerce Ranking Member Joe Barton—a supporter of the bill—expressed his disappointment that, given the importance of the bill and the Administration’s veto threat on it, the bill was not brought to the floor under a rule, to allow additional time for deliberation and debate—as well as an opportunity for a Republican motion to recommit the legislation.

**Do states believe that their current actions on Medicaid are appropriate?**

During the Energy and Commerce Committee hearing on H.R. 5613, most witnesses supporting the legislation—and opposing the regulations—did not attempt to argue the point that the regulations are inappropriate, or that there are not abuses currently within the Medicaid system. Most of the testimony from witnesses—and most of the arguments made by Members supporting the legislation—instead focused on the impact for hospitals, states, and local governments associated with losing a current source of funding.

In addition, several states have reached agreement with CMS on curtailing practices that various audits have identified as being inconsistent with the fiscal integrity of the Medicaid program and its shared federal-state partnership. The regulations that would be blocked by H.R. 5613 attempt to codify these clear standards for states and future Administrations to follow in future years.

**Do States not need the money in the current economic environment?**

According to the liberal Center for Budget and Policy Priorities, the combined total of all states deficits in FY 2009 is expected to be \$40 billion. The federal government faces a FY 2009 deficit of \$340 billion—**8.5 times greater** than the combined shortfall facing the states—and lacks a balanced budget requirement that many states are forced to operate under. In addition, much of the financial difficulties facing states results from their *expansions* of the Medicaid program in recent years that they now cannot afford.

## **Haven't Congressional Republicans recently taken action to slow the growth in Medicaid spending and improve Medicaid's fiscal integrity?**

Yes. The Deficit Reduction Act (P.L. 109-171), which passed in December 2005 with the support of 212 Members—all Republicans—included \$4.8 billion in Medicaid savings over five years as a first attempt to restore its fiscal integrity by slowing its growth. However, if the moratoria remain intact, those modest reductions in Medicaid's growth rate would be more than exceeded by the \$16-18 billion in foregone savings over five years associated with the regulations' repeal.

## **Why is reforming Medicaid so important?**

The growth of Medicare, Medicaid, and Social Security are unsustainable. These entitlement programs have a total unfunded liability of more than \$50 trillion, which amounts to over \$450,000 for every American family. A baby girl born this morning in America automatically inherits a full mortgage as she takes her first breath. By 2040, taxes would need to double in order to pay for the compounded spending if the federal budget is left on automatic pilot—and that's assuming no more additional spending. If taxes are not doubled, by 2040, Social Security, Medicare, and Medicaid—just three programs—will crowd out all other national priorities in the federal budget, including defense programs, veterans programs, etc. Some conservatives may be concerned that this bill is an attempt to undo a modest effort on the part of the Administration to begin rooting out waste, fraud, and abuse in Medicaid and slow its growth.

## **What changes were made to the bill in Committee?**

During consideration in the Energy and Commerce Committee, Chairman Dingell and Ranking Member Joe Barton (R-TX) reached agreement on several modifications to the legislation. The revised language narrowed the scope of the proposed moratoria to permit CMS to engage in outreach activities with states to curtail abusive and/or questionable financing tactics, while maintaining the moratoria on CMS' ability to enact clear standards prohibiting these activities permanently. In addition, the substitute language adopted in Committee included increased funding for anti-fraud enforcement, an independent study assessing the need for the regulations and their potential impact on states, and inclusion of an asset verification system to pay for the moratorium. Some conservatives may argue that, while these changes have improved the bill, GAO has provided Congress with a wealth of studies highlighting problems that the CMS regulations blocked by H.R. 5613 seek to address.

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